Supreme Court, U. S.
FILED
FEB 4 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

Nos. 79-928
79-936

BRIDGEPORT HYDRAULIC COMPANY
THE LITCHFIELD WATER COMPANY
THE NEW HAVEN WATER COMPANY
CONNECTICUT AMERICAN WATER COMPANY

v.

THE DIVISION OF PUBLIC UTILITY CONTROL
WITHIN THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF CONNECTICUT

ON APPEAL FROM THE SUPERIOR COURT FOR THE JUDICIAL
DISTRICT OF HARTFORD-NEW BRITAIN AT HARTFORD

MOTION TO DISMISS
IN REPLY TO JURISDICTIONAL STATEMENTS

CARL R. AJELLO
Attorney General

By: WILLIAM B. GUNDLING
Assistant Attorney General

On the Brief:

PETER J. JENKELUNAS
Assistant Attorney General

Office of the Attorney General
P.O. Box 120
Hartford, Connecticut 06102
(203) 566-4950

INDEX

Page

Citations ii

Opinion Below 1

Jurisdiction 1

Question Presented 1

Regulations and Orders 2

Statement of the Case 2

No Substantial Federal Question Exists in this Case .. 5

I. The 1972 Amendments to the Connecticut Uniform System of Accounts Do Not Take the Property of the Appellant Companies or Their Shareholders 6

II. The 1972 Amendments to the Connecticut Uniform System of Accounts Are Consistent with Generally Recognized Principles of Accounting and the Factual Realities of Connecticut's Public Utility Operations 14

Conclusion 18

Appendix 1a

CITATIONS

Cases: *Page*

American Telephone & Telegraph Co., 64 FCC 2d 1 (1977) 13

American Telephone & Telegraph Company v. United States, 299 U.S. 232 (1936) 6, 14

Arizona Grocery Company v. Atchison, Topeka and Santa Fe Ry. Co., 284 U.S. 370 (1932) 10

Bluefield Waterworks & Improvements Co. v. Public Service Comm'n., 262 U.S. 679 (1923) 7

Board of Public Utility Commissioners v. New York Telephone Company, 271 U.S. 23 (1926) 6, 10

Boise Water Corp. v. Idaho Public Utilities Commission, 99 Idaho 158, 578 P.2d 1089 (1978) 13

Bowles v. Willingham, 321 U.S. 503 (1944) 6

Bridgeport Hydraulic Company v. Council on Water Company Lands, 453 F.Supp. 942 (D. Conn. 1977) *affirmed*, 439 U.S. 999 (1978) 3, 4, 9

City of Lexington v. Lexington Water Company, 458 S.W.2d 778 (Ky. 1970) 13

Connecticut Natural Gas Co. v. Public Utilities Comm'n., 29 Conn. Sup. 379 (1971) 10

Democratic Central Committee v. Washington Metropolitan Transit Service, 485 F.2d 786 (D.C. Cir. 1973), cert. *denied* 415 U.S. 935 (1974) 13

DeNuzio v. DeNuzio, 90 Conn 342 (1916) 6

Cases: *Page*

Eisner v. Macomber, 252 U.S. 189 (1920) 6

Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944) 7, 12

Federal Power Commission v. Natural Gas Pipeline Company, 315 U.S. 575 (1942) 12

Goldblatt v. Town of Hempstead, New York, 369 U.S. 590 (1962) 6

In Re Revision of Rates Filed by Plainfield-Union Water Co., 57 N.J. Super. 158, 154 A.2d 201 (1959) 13

Kansas City Southern Ry. Co. v. United States, 231 U.S. 423 8

Keystone Water Co., White Deer Distric v. Pennsylvania Public Utility Comm'n., 19 Pa. Commw. Ct. 292, 339 A.2d 873 (1975) *aff'd. by an equally divided ct.*, 477 Pa. 594, 385 A.2d 946 (1978) 13

New York Water Service Corp. v. Public Service Commission, 12 A.D.2d 122, 208 N.Y.S.2d 857 (1960), *app. denied*, 13 A.D.2d 610, 214 N.Y.S.2d 667 (1961) 13

Order No. 420, 45 F.P.C. 106 13

Order No. 473, 49 F.P.C. 390 (1973) 13

Penn Central Transportaton Company v. New York City, 438 U.S. 104 (1978) 5, 11

Permian Basin Area Rate Cases, 390 U.S. 747 (1968) 6

Rhode Island Hospital Trust Co. v. Doughton, 270 U.S. 69 (1926) 6

Silberman v. Blodgett, 105 Conn. 192 (1926) 6

Statutes:

C.G.S. Section 16-43 7

C.G.S. Section 16-50c 7

C.G.S. Section 25-32 7

IN THE

Supreme Court of the United States

OCTOBER TERM 1979

Nos. 79-928
79-936

BRIDGEPORT HYDRAULIC COMPANY
THE LITCHFIELD WATER COMPANY

v.

THE DIVISION OF PUBLIC UTILITY CONTROL
WITHIN THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF CONNECTICUT

THE NEW HAVEN WATER COMPANY
CONNECTICUT AMERICAN WATER COMPANY

v.

THE DIVISION OF PUBLIC UTILITY CONTROL
WITHIN THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF CONNECTICUT

ON APPEAL FROM THE SUPERIOR COURT FOR THE JUDICIAL
DISTRICT OF HARTFORD-NEW BRITAIN AT HARTFORD

MOTION TO DISMISS
IN REPLY TO JURISDICTIONAL STATEMENTS

Appellee, the Division of Public Utility Control, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves that the appellants' appeals from the decision of the Connecticut Superior Court be dismissed on the ground that no substantial federal question has been presented to this Court.

OPINION BELOW

The opinion of the Connecticut Superior Court is not reported. The appellants have attached to their jurisdictional statements copies of the opinion.

JURISDICTION

Three cases were consolidated for trial purposes to the Connecticut Superior Court, a declaratory judgement action taken pursuant to the Connecticut Administrative Procedure Act concerning the validity of certain Connecticut accounting regulations for public service companies and two appeals taken from administrative agency decisions on two public service company rate increase applications. The opinion and order of the Superior Court were entered May 12, 1979. Appellants petitioned the Connecticut Supreme Court for review. Appellants' petition for certification was denied by the Supreme Court on July 24, 1979. A motion for reargument and reconsideration of the appellants' petition for certification was denied by the Supreme Court on September 19, 1979.

The appellants have appealed to this Court and have invoked this Court's jurisdiction under 28 U.S.C. 1257(2).

QUESTION PRESENTED

Whether § 5, 7, 411.6, 411.7, 421.1 and 421.2 of the Connecticut Uniform System of Accounts prescribed for Class A water utilities which provide for the recordation of the gains and losses from utility plant and property dispositions on a utility company's income statement either as part of a company's utility or non-utility operations, rather than in its surplus accounts, are consistent with generally recognized principles of accounting, as those principles apply to the factual realities of Connecticut's utility regulatory environment.

REGULATIONS AND ORDERS

Sections 5, 7, 411.6, 411.7, 421.1 and 421.2 of the Connecticut Uniform System of Accounts prescribed for Class A water utilities are reprinted at p. 2a.

The decisions of the Public Utilities Control Authority in its Docket No. 760701, *Application of the Litchfield Water Company to Increase its Rates to all Customers* and Docket No. 770301, *Application of the Bridgeport Hydraulic Company to Increase its Rates to all Customers* are reprinted at pages 29a and 47a of the Jurisdictional Statement submitted by the Bridgeport Hydraulic Company and The Litchfield Water Company.

STATEMENT OF THE CASE

The appellee is the Division of Public Utility Control of the State of Connecticut,[1] an agency designated by statute to regulate by rule and order the operations and rates of all Connecticut public service companies.

In 1972, the Connecticut Public Utilities Commission duly adopted amendments to the Uniform System of Accounts for Class A water companies[2] and all gas and electric companies. The amendments were adopted to specifically conform the Connecticut Uniform System of Accounts to national changes in the generally recognized principles of accounting promulgated in 1966 by the Accounting Principles Board[3] in its Opinion No. 9, as those principles applied to the realities of Connecticut public utilities' operations. (Appendix, p. 1a) In particular, Connecticut's accounting regulations were amended to require the recordation of gains and losses from the sale, abandonment or other disposition of utility plant, including land and land rights, on a company's income statement, rather than in its surplus accounts. Gains and losses from the disposition of utility plant which had been used and useful in providing utility service to the public were directed "above-the-line"[4] as part of utility operations. Gains and losses from the disposition of a utility company's property which had never been employed in utility service were directed "below-the-line" as part of non-utility operations.

The result of the accounting changes was a more accurate portrayal of the position of utility plant and property dispositions in Connecticut utility company life.

On November 10, 1972, the Connecticut Class A water companies, including the present appellants, requested a declaratory ruling from the Connecticut Court of Common Pleas on the constitutionality of the 1972 accounting amendments. *Greenwich Water Company v. Public Utilities Commission*, Docket No. 108038, Hartford County. The state case was stayed in 1975, however, on the commencement of a declaratory judgement action and a request for injunctive relief brought by the appellant companies to a three judge federal panel. *Bridgeport Hydraulic Company v. Council on Water Company Lands*, 453 F. Supp. 942 (D.Conn. 1977). Included among other issues in the federal case was the companies' contest of the constitutionality of the 1972 amendments to the

---

[1]Formerly the Public Utilities Commission and the Public Utilities Control Authority.

[2]Class A water companies are those water utility companies having annual operating revenues in excess of $50,000.

[3]The Accounting Principles Board is part of the American Institute of Certified Public Accountants. The published opinions of the Board are statements of generally recognized principles of accounting applicable to all businesses, regulated and non-regulated.

[4]Above-the-line accounts represent accounts above the line denoted utility operating income and are associated with a company's utility operations. Below-the-line accounts represent accounts below the line denoted utility operating income and are associated with a company's non-utility operations. In the determination of the reasonableness of a particular utility rate both the return on invested plant (utility operating income) and the return on common equity are considered by the regulatory agency.

Connecticut Uniform System of Accounts. After the presentation of testimony, a stipulation of fact, documentary evidence and argument, the three judge federal panel dismissed the companies' claims against the amendments on alternate grounds: (1) the companies failed to prove that the accounting regulations or their application to the ratemaking process deprived them or their shareholders of any property rights in violation of the Constitution and thus the Court was without power to render an advisory opinion on a hypothetical question and (2) that a possible infringement of a company's constitutional right to a just and reasonable rate in a particular case should properly be addressed to a State Court as the Johnson Act, 28 United States Code 1342, was a bar to federal intervention in state ratemaking. The federal court's decision dismissing the companies' claims against the 1972 accounting regulations was appealed by the companies to this Court, but their appeal was withdrawn.

Subsequent to the federal decision, *Greenwich Water Company v. Public Utilities Commission, supra,* was reactivated in the Connecticut Superior Court. That case was consolidated for trial purposes with two appeals from rate decisions issued by the Public Utilities Control Authority; *Bridgeport Hydraulic Company v. Public Utilities Control Authority*, Docket No. 117874 1, Fairfield County, and *The Litchfield Water Company v. Public Utilities Control Authority*, Docket No. 015775 9, Litchfield County. The two rate decision appeals were presented to the Connecticut Superior Court on the respective administrative records and the declaratory judgement action was presented on a stipulation of fact and an evidentiary record consisting of the testimony and evidence presented to the three judge federal panel in *Bridgeport Hydraulic Company v. Council on Water Company Lands, supra.* (See Appendix p. 6a)

The Connecticut Superior Court dismissed the companies' claims and upheld the validity of the amended accounting regulations. The Court found that the recordation of utility plant

disposition gains and losses either above or below-the-line on the income statement did not constitute a "taking" of the property of the companies or their shareholders, but, instead, was a legislative policy determination consistent with the regulatory circumstances existing in Connecticut. Specifically, the Court held that the companies failed to prove that the amendments were at odds with generally recognized principles of accounting or that the amendments, as they may be applied to particular rate applications, deprive the companies or their shareholders of any constitutionally protected rights.

The companies applied for certification for review to the Connecticut Supreme Court. The Supreme Court denied certification. The companies have now appealed to this Court for review for the 1972 amendments to the Connecticut Uniform System of Accounts. The companies' appeal should be dismissed.

NO SUBSTANTIAL FEDERAL QUESTION EXISTS IN THIS CASE

The companies, in their jurisdictional statements, allege that the issue presented by their appeals to this Court is one of constitutional proportion. The companies claim that the 1972 amendments to the Connecticut Uniform System of Accounts take their property and the property of their shareholders in violation of the Fourteenth Amendment to the United States Constitution. The companies have overstated the case. The existence and operation of the 1972 amendments do not interfere with or impair any of the constitutionally guaranteed rights of either the appellant companies or their shareholders. None of the elements of a taking discussed by this Court in *Penn Central Transportion Company v. New York City*, 438 U.S. 104, exist in this case. The validity of Connecticut's 1972 accounting regulations does not present a question of property right deprivation or a question of ownership to utility property or property disposition proceeds between companies, shareholders or customers. The validity of the 1972 accounting

regulations depends, instead, on a consideration of legislative accounting policy and its relation to the factual reality of Connecticut's regulatory circumstances. *American Telephone & Telegraph Company v. United States*, 299 U.S. 232.

I. The 1972 Amendments to the Connecticut Uniform System of Accounts Do Not Take The Property of the Appellant Companies or Their Shareholders.

Neither the shareholders in an ongoing utility company nor a company's customers have a property interest in the particular assets of a company or in the proceeds from normal asset disposition. The companies' shareholders do not "own" the companies' assets or any appreciation in the value of those assets. *Rhode Island Hospital Trust Co. v. Doughton*, 270 U.S. 69, 81-83; *Silberman v. Blodgett*, 105 Conn. 192, 213. The ownership of stock gives the shareholder the right to share in the management of the corporation, in the profits when declared as dividends and in the assets of the corporation upon dissolution.[5] *DeNuzio v. DeNuzio*, 90 Conn. 342, 345. Stockholders have no interest in the assets of an ongoing utility operation beyond their general interest in the total company. *Eisner v. Macomber*, 252 U.S. 189, 208-209; *Rhode Island Hospital Trust Co. v. Doughton*, 270 U.S. 69. A utility company's ratepayers clearly do not have any legal or equitable interest in a company's assets. *Board of Public Utility Commissioners v. New York Telephone Company*, 271 U.S. 23, 32. A utility company's property and any proceeds from the disposition of its property belong exclusively to the company itself. A utility company's property, however, may be regulated, subject to the protection of certain constitutional guarantees. *Bowles v. Willingham*, 321 U.S. 503, 517-518; *Goldblatt v. Town of Hempstead, New York*, 369 U.S. 590; *Permian Basin Area Rate Cases*, 390 U.S. 747, 769.

---

[5]As the Connecticut Uniform System of Accounts only applies to ongoing utility operations and does not operate in utility company dissolutions, shareholders' rights on company dissolution are not affect by the 1972 regulations.

The constitutional guarantees afforded to a utility company and its shareholders are that the end result of utility regulation is a protection of the original amount of capital invested in the enterprise, a reasonable level of revenues to provide a company with continued financial viability and a fair return on the original value of the utility property devoted to public service. *Bluefield Waterworks & Improvements Co. v. Public Service Comm'n.*, 262 U.S. 679, 692-693; *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591. None of these constitutional guarantees are impaired by the existence or operation of the 1972 amendments to the Connecticut Uniform System of Accounts.

The 1972 amendments do not affect a company's ownership or control of its property. The revised accounting regulations do not require a company to remove any of its utility plant from utility operations and do not require a company to sell any of its property.[6] If and when such property is sold, a company receives the entire amount of the proceeds from the sale, which

---

[6]The companies place great stress on the fact that the 1972 regulations may apply to the sale of watershed acreage which the companies have removed from its used and useful status and on which they now receive no return. Contrary to the companies' assertion that State approval is required before property can be *withdrawn* from public service, the record in this case demonstrates that the removal of utility property from its used and useful status is essentially a unilateral act on the part of the companies. State approval is only required prior to the *sale* of such property. Section 16-43 and 16-50c, Connecticut General Statutes. The definitional status of the regulations was necessary to preserve their integrity and avoid a company's sidestepping the 1972 accounts by simply withdrawing property earmarked for profitable disposition from the plant accounts immediately prior to sale and maintaining property involved in loss transactions in the plant accounts during disposition.

All the land that the companies now claim is available for sale was removed from its used and useful status only *after* the adoption of the 1972 amendments. Further, the sale status of such land is not clear because of recent health restrictions placed on the disposition of watershed acreage. Section 25-32, Connecticut General Statutes. Land which the companies have unilaterally determined to be nonessential may, in fact, be necessary for continuing operations, requiring its return to rate base status. The companies' above-described unilateral action should not create an equitable leverage against the amendments.

proceeds remain in its cash reserves until paid out for company purposes by management. No money is paid or given to ratepayers. To the extent that the 1972 accounting regulations require the recordation of the gains or losses from the disposition of property employed in utility service above-the-line and direct gains and losses on the disposition of property not employed in public utility service below-the-line on the income statement, rather than in the surplus accounts, no taking occurs. *Kansas City Southern Ry. Co. v. U.S.*, 231 U.S. 423.

In conformity with constitutional principles, the 1972 accounting regulations protect and guarantee the original investment of the companies and their shareholders in utility plant and property. If a gain is realized on the disposition of utility plant, the original amount invested is returned to the companies free of regulation under the 1972 amendments. If a loss occurs on the disposition or abandonment of utility plant, the original amount invested is protected by the 1972 amendments through an above-the-line recordation of the loss.

To the extent that utility plant disposition gains and losses are considered in the Connecticut ratemaking process,[7] the process provides the companies and their shareholders with a fair return on their investment. This conclusion was reached by

[7]Utility plant disposition proceeds have received varied ratemaking treatment in Connecticut, depending upon the particular rate case and depending upon whether such dispositions have occurred within a company's "test year" (the most recent twelve months of actual financial experience available), the magnitude of the disposition result and whether such dispositions are of a current, recurring nature. The record before this Court contains three rate decisions which did not reflect utility plant disposition proceeds (Exhibits 8, 10 and 12), two decisions in which the proceeds were amortized (Exhibits 14 and 18), and four decisions in which the proceeds were considered on the basis of a yearly average (Exhibits 19 and 20, and PUCA Docket Nos. 780201 and 780303, submitted to the Superior Court at the hearing). Further, in both Docket Nos. 780201 and 780303 proceeds from the disposition of utility property which was not employed in utility service received *below-the-line* accounting and ratemaking treatment, in conformity with the 1972 regulations. Of the nine Connecticut rate decisions involving the appellant companies since the adoption of the accounting amendments, only three have been appealed.

both the Connecticut Superior Court in *Greenwich Water Company v. Public Utilities Commission, supra; Litchfield Water Company v. Public Utilities Control Authority, supra;* and *Bridgeport Hydraulic Company v. Public Utilities Control Authority, supra;* and by the three judge federal panel in *Bridgeport Hydraulic Company v. Council on Water Company Land, supra,* after their review of virtually identical records, including the Connecicut rate decisions which have considered utility plant disposition proceeds.

The Connecticut Superior Court held:

> "There was no showing that the rate of return on investment was inadequate, nor insufficient to attract investors."

The federal Court stated:

> "The present record presents no concrete set of facts which demonstrate that the passage of the 1972 Amendments has caused the shareholders to receive less than such fair return." 453 F. Supp. at p. 953.

Thus, the 1972 amendments do not impair the companies' or their shareholders' constitutional right to a just and reasonable return on their investment. Further, as each rate decision has reflected a revenue level sufficient to meet ongoing revenue requirements, the continued financial viability of the companies has been assured.[8]

[8]The appellant New Haven Water Company has received three Connecticut rate increase decisions which have considered utility property disposition proceeds. (Exhibits 14, 20 and PUCA Docket No. 780201, submitted to the Superior Court) None of these rate decisions were appealed by the company, including PUCA Docket No. 11691 (1975) referred to by the appellant New Haven and Connecticut American Water Companies at p. 7-8 of their Jurisdictional Statement. It must be presumed that the company determined that the rate decisions provided it with just and reasonable revenue levels.

The companies claim, however, that the ratemaking consideration of utility plant disposition proceeds decreases their utility operating expenses and consequently lowers a theoretical level of revenues that they "should" receive. Contrary to the companies' theory, however, the record in this case demonstrates that the companies have at all times received exactly what they have been entitled to; a level of revenues sufficient to provide for continuing operations and for a reasonable return on investment. Proceeds from utility plant dispositions are entirely received and retained by the companies. To the extent that current proceeds are considered in the ratemaking process, the proceeds are available for use in a company's ongoing operations. In a similar manner, to the extent that losses from the disposition or abandonment of utility plant are considered in the ratemaking process, such losses are considered as part of a company's utility operations. There is no difference in effect or constitutional significance between an increase or decrease in a utility company's revenue requirements caused by a gain or loss on the disposition of utility plant and an increase or decrease in revenue requirements caused by any other facet of a company's financial operating experience. Confiscation does not occur when the effect of regulation is the utilization of utility revenues in utility operations.

This Court's decision in *Board of Public Utilities Commissioners v. New York Telephone Co.*, 271 U.S. 23, does not prohibit the regulatory consideration of current utility revenues in current company operations, as occurs under Connecticut's 1972 accounting regulations in conjunction with Connecticut's prospective ratemaking philosophy. *Connecticut Natural Gas Co. v. Public Utilities Comm'n.*, 29 Conn. Sup. 379. *New York Telephone Co.* only prohibits retroactive ratemaking, where past collected revenues are employed to bolster an admittedly unjust and unreasonable future rate level. The issue of retroactive ratemaking and reparations, addressed by this Court in *Board of Public Utilities Commissioners v. New York Telephone Co., supra*, and in *Arizona Grocery Company v. Atchison Topeka and Santa Fe Ry. Co.*, 284 U.S. 370, does not exist in this case. The 1972 amendments only apply to utility plant and property disposition gains and losses which have occurred after 1972 and do not reach back to affect any dispositions or rate decisions that may have occurred prior to their effective date. Past profits are not used to sustain future unreasonable rates. There is no question that Connecticut has provided for all of the companies' revenue requirements and has allowed the companies and their shareholders a just and reasonable return on their investment. Further, the 1972 regulations did not retroactively change the sale or accounting status of any utility company property. At the time of the adoption of the amendments, all of the property which the companies now claim is available for sale was used and useful as utility plant providing utility service to the public. To the extent that the companies' shareholders may have expected utility plant or utility property disposition proceeds to be available elsewhere and not be employed in utility operations, their expectations are not of constitutional significance. The companies' shareholders are shareholders in public service companies. An expectation that utility plant or utility plant disposition gains or losses would not constitute part of utility operations in speculative and does not rise to the level of a constitutionally protected property interest. *Penn Central Transportation Company v. New York City*, 438 U.S. 104, 130. As the adoption of the 1972 accounting amendments had no effect, retroactive or otherwise, on legitimate investor expectations or on shareholders' equitable interests in ongoing utility operations, this Court's decision in *New York Telephone Company* does not constitute a bar to the validity of Connecticut's revised accounting procedure.

The companies have attempted to equate their constitutional right to receive fair market value for any property condemned by the State with their claimed constitutional direction for accounting and ratemaking treatment of utility plant disposition gains and losses. The companies' equation fails. First, the companies' right to just compensation on the condemnation of

their property is undisputed and is not affected by the 1972 amendments. The companies receive and retain the entire amount of any condemnation award.[9] Second, fair market value is not a constitutional standard in utility rate regulation. *Federal Power Commission v. Natural Gas Pipeline Company*, 315 U.S. 575; *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591. A utility company's right to just compensation in the condemnation field translates into the regulatory duty to protect and return the original amount which a company has invested in providing utility service to the public and to provide a company and its shareholders with a reasonable rate of return on the original amount of the investment. *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591, 602-607. Once the above-stated constitutional guarantees are achieved, the exact manner and method employed to attain that result are a matter committed to a regulatory agency's discretion. This principle was stated by this Court as follows:

> "Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling.
>
> ———
>
> The conditions under which more or less might be allowed are not important here. Nor, is it important to determine the various permissible ways in which any rate base on which the return is computed might be arrived at." *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591, 602-603.

As the companies' rights on condemnation of their property are not affected by and do not control Connecticut's regulatory process and as the record in this case clearly demonstrates that the end result of Connecticut's rate regulation is just and

———

[9]The appellant New Haven Water Company received in 1978 $1,122,000 from the condemnation of certain of its property. As the property had not been employed in providing utility service to the public, the entire condemnation award, in conformity with the 1972 accounting regulations, received *below-the-line* accounting and ratemaking treatment (PUCA Docket No. 780201).

reasonable, the 1972 amendments to the Connecticut Uniform System of Accounts do not impair any constitutionally protected rights of the companies of their shareholders.

The absence of a constitutional mandate directing a particular accounting or ratemaking treatment for utility property disposition gains and losses is reflected in the diversity of regulatory opinion existing throughout the country. Recordation of utility plant disposition proceeds has been directed to a company's surplus accounts rather than to the income statement in *Boise Water Corp. v. Idaho Public Utilities Commission*, 99 Idaho 158, 578 P.2d 1089 (1978); *City of Lexington v. Lexington Water Co.*, 458 S.W.2d 778 (Ky. 1970) and *Keystone Water Co., White Deer Distric v. Penn. Public Utility Comm'n.*, 19 Pa. Commw. Ct. 292, 339 A.2d 873 (1975). Utility plant disposition proceeds have been approved for consideration in rate regulation proceedings in *Democratic Central Committee v. Washington Metropolitan Transit Service*, 485 F.2d 786; *In Re Revision of Rates Filed by Plainfield-Union Water Co.*, 57 N.J. Super. 158, 154 A.2d 201, 211 (1959); *New York Water Service Corp. v. Public Service Commission*, 12 A.D.2d 122, 208 N.Y.S.2d 857 (1960) and *American Telephone and Telegraph Co.*, 64 FCC 2d 1, 65-66 (1977). The Federal Power Commission provides above-the-line accounting treatment for the disposition of utility property held for future use (Federal Power Commission, Docket No. R-379, Order No. 420, 45 F.P.C. 106, 108) and below-the-line recordation of the proceeds received on the disposition of property employed in public service (Federal Power Commission, Order No. 473, 49 F.P.C. 390). The diverse regulatory decisions regarding utility plant disposition gains and losses do not represent national confusion over constitutional principles requiring resolution by this Court. Instead, the diversity of opinion contained in the above-cited decisions represents the individual regulatory assessment of the regulatory circumstances existing in each particular jurisdiction. The Constitution does not require national uniformity in individual accounting practices or ratemaking policies.

II. The 1972 Amendments to the Connecticut Uniform System of Accounts Are Consistent With Generally Recognized Principles of Accounting and the Factual Realities of Connecticut's Public Utility Operations.

It is clear that the validity of Connecticut's 1972 accounting regulations does not present a question of constitutional proportion which merits consideration by this Court. As with other regulatory accounting provisions, the validity of the 1972 amendments depends upon the assessment of legislative policy and its relationship to fundamental principles of accounting as they apply to the factual circumstances existing in Connecticut. The standard against which Connecticut's 1972 regulations must be tested (and against which the regulations were tested by the Connecticut Superior Court) was established by this Court in *American Telephone & Telegraph Co. v. United States*, 299 U.S. 232. The standard was stated by this Court as follows:

> "This court is not at liberty to substitute its own discretion for that of administrative officers who kept within the bounds of their administrative powers. To show that these have been exceeded in the field of action here involved, it is not enough that the prescribed system of accounts shall appear to be unwise or burdensome or inferior to another. Error or unwisdom is not equivalent to abuse. What has been ordered must appear to be 'so entirely at odds with fundamental principles of correct accounting' (*Kansas City S.R. Co. v. United States*, 231 U.S. 423, 444, 58 L.ed. 296, 305, 34 S.Ct. 125, 52 L.R.A. (N.S.) 1) as to be the expression of a whim rather than an exercise of judgment. *Norfolk & W.R. Co. v. United States*, 287 U.S. 134, 141, 77 L.ed. 218, 222, 53 S.Ct. 52; *Kansas City S.R. Co. v. United States, supra* (231 U.S. 456, 58 L.ed. 309, 34 S.Ct. 125, 52 L.R.A. (N.S.) 1)." *American Telephone & Telegraph Co. v. U.S.* 299 U.S. at pp. 236, 237.

The companies, in their jurisdictional statements, have claimed that the 1972 accounting regulations are unconstitutional on their face and have ignored the existence of the extensive factual record developed in this case (Appendix p. 6a). The 1972 accounting regulations are not unconstitutional on their face. Instead, their validity depends upon and is supported by the facts which exist in the record before this Court. The record demonstrates, in part: utility plant, including utility company land employed in utility service, functions as an integral part of utility company operations (Exhibit 88); the acquisition and disposition of utility plant, including land and land rights, is a normal and ordinary part of Connecticut's water utility business (Exhibit 83) Connecticut has historically allowed losses on utility plant to be recovered, through the ratemaking process, as above-the-line charges (Exhibit 60, Exhibit 79); much of the property which the companies claim will be affected by the 1972 amendments would be available for disposition only after a direct conversion to water filtration systems which would increase the companies' rate bases by $40-60 million and which would also be subject to the amendments on disposition or abandonment (Stipulation, Exhibit 5, 82); the companies' original investment on their property has been protected and maintained and a fair return on that investment has been allowed; and the 1972 amendments are in conformity with the generally recognized principles of accounting promulgated by the Accounting Principles Board and have been sanctioned as a valid alternate accounting procedure by the National Association of Regulatory Utility Commissioners (Exhibits 3, 6, 78 and 79).

In this regard, the nature of the companies' own appeal refutes their contention for a constitutional accounting direction. The companies have conceded the propriety of the 1972 amendments' movement of utility property disposition gains and losses from the surplus accounts to the income statement. (Accounts 421.1 and 421.2) The companies have conceded the validity of the 1972 regulations' above-the-line direction for the gain or loss on the disposition of depreciable items of utility

plant. (Instruction 5, Accounts 411.6 and 411.7) The companies assert to this Court, however, that the Constitution directs a particular accounting treatment for the disposition of non-depreciable items of utility plant, where it does not so direct other items of utility property or operations. The companies' claim is untenable. There is no practical basis for distinguishing depreciable from non-depreciable items of utility plant. All utility plant and all utility plant dispositions constitute an integral and ordinary part of utility operations. (Exhibit 88) Nor is there an economic basis for distinguishing between different items of utility plant. Although depreciation charges are collected annually on depreciable property, non-depreciable property affords a constant rate of return which, over the period of its employment in utility operations, often cumulatively exceeds the original cost by several times (Exhibits 32, 33 and 34). Plainly, there is no economic difference between a gain or loss on the disposition of depreciable as opposed to non-depreciable property. Further, there is no legal basis for distinguishing between the disposition accounting for depreciable and non-depreciable property. Although one Court (*Boise Water Corp. v. Idaho Public Utilities Commission*, 578 P.2d 1089) has held that such a difference exists, the Court based its conclusion on the assertion that ratepayers acquire an equitable *ownership* interest in depreciable property by paying annual depreciation charges. The Court's conclusion, however, is entirely refuted by this Court's dismissal of that theory in *New York Telephone Company, supra*, which the State does not contest and upon which the appellants rely.

The fault with the company's present appeal is that individual portions of the 1972 accounting regulations cannot validly be isolated and taken out of context to support a claim for a particular constitutional accounting mandate for one account, but not for another. The 1972 accounting regulations were amended to conform the accounting treatment of *all* items of gain or loss on the disposition of *all* items of utility plant and property to generally recognized principles of accounting. The

legislative decisions encompassed by Sections 5, 7, 411.6, 411.7, 421.1 and 421.2 are integrated and accurately reflect the nature of utility plant and property and its relation to utility company operations. The legislative decisions contained in those regulations are fully supported by the record in this case.

The Connecticut Superior Court on its review of the record found that the adoption of the 1972 amendments was not arbitrary, illegal or capricious. A review of the Connecticut Superior Court's assessment of the record evidence in this case does not present a substantial federal question.

CONCLUSION

For the reasons stated above, the instant appeals do not present a substantial federal question. This Court's review of the Connecticut Superior Court's decision is not required and the appeals should be dismissed.

Respectfully submitted,

CARL R. AJELLO
Attorney General

By: WILLIAM B. GUNDLING
Assistant Attorney General

with whom on the brief was

PETER J. JENKELUNAS
Assistant Attorney General

APPENDIX

Connecticut Law Journal

July 27, 1971

PUBLIC UTILITIES COMMISSION

Notice

Pursuant to the authority to regulate public service companies vested in it by Title 16 of the General Statutes, the Public Utilities Commission hereby gives notice in accordance with Section 4-42 of the General Statutes of its intent to amend regulations concerning the present Uniform System of Accounts applicable to Electric, Gas and Class "A" Water Companies.

The proposed amendments will modify certain classifications within the existing Uniform System of Accounts.

The following is a summary of the proposed changes:

1. The adoption of the inclusive income statement in harmony with Bulletin 9 of the AICPA (American Institute of Certified Public Accountants). All items of revenues and expenses, including many previously charged or credited directly to surplus, with few exceptions, will be included in the current income statement.

2. The inclusion of the gains or losses on sale of property held for future use and non-utility property in the other income or other income deductions section of the income statement, as appropriate.

3. Include the gains or losses on sale or other disposition of utility plant, in the utility operating income section of the income statement.

4. Transfer the interest charged to construction-credit account from the interest charges section of the income statement

to the other income section in order to negate any unintended implication that entries to this account represent a reduction in interest expenses.

5. Provide for deferrals of income taxes pursuant to the Internal Revenue Service Tax Reform Act of 1969 in those instances where permission to use this method has been obtained from the Commission.

6. For Electric Utilities only. Reclassify nuclear fuels into the utility plant section of the balance sheet, thus distinguishing nuclear fuel from other conventional fuels.

GEORGE J. GRIFFIN.
Executive Secretary

UNIFORM SYSTEM OF ACCOUNTS FOR CLASS A WATER COMPANIES

Instructions

5. Utility Plant Purchased or Sold

F. When utility plant constituting an operating unit or system is sold, conveyed, or transferred to another by sale, merger, consolidation, or otherwise, the book cost of the property sold or transferred to another shall be credited to the appropriate utility plant accounts, including amounts carried in account 117, Utility Plant Acquisition Adjustments. The amounts (estimated if not known) carried with respect thereto in the accounts for accumulated provision for depreciation and amortization and in account 252, Customer Advances for Construction, and account 271, Contributions in Aid of Construction, shall be charged to such accounts and the contra entries made to account 102, Utility Plant Purchased or Sold. Unless otherwise ordered by the Commission, the difference, if any, between (a) the net amount of debits and credits and

(b) the consideration received for the property, less commissions and other expenses of making the sale, shall be included in account 411.6, Gains from Disposition of Utility Plant or account 411.7, Losses from Disposition of Utility Plant, as appropriate. (See account 102, Utility Plant Purchased or Sold.)

7. Land and Land Rights

E. Any difference between the amount received from the sale of land or land rights, less agent's commissions and other costs incident to the sale, and the book cost of such land or land rights, shall be included in account 411.6, Gains from Disposition of Utility Plant, or account 411.7, Losses from Disposition of Utility Plant, provided such property is recorded in accounts 101-104. If the property being disposed of is recorded in account 105, Property Held for Future Use, or account 121, Nonutility Property; but had previously been recorded in one of the aforementioned utility plant accounts, gains or losses on its sale shall be credited or charged to account 411.6 or 411.7, as appropriate, otherwise to account 421.1, Gain on Disposition of Property, or account 421.2, Loss on Disposition of Property, unless a reserve therefor has been authorized and provided.

Accounts

1. UTILITY PLANT

101. Utility Plant in Service Classified.

A. This account shall include the original cost of utility plant, included in the plant accounts prescribed herein and in similar accounts for other utility departments, owned and used by the utility in its utility operations, and having an expectation of life in service of more than one year from date of installation, including such

property owned by the utility but held by nominees. Separate subaccounts shall be maintained hereunder for each utility department.

B. The cost of additions to and betterments of property leased from others, which are includible in this account, shall be recorded in subdivisions separate and distinct from those relating to owned property. (See utility plant instruction 6.)

Income Accounts

1. Utility Operating Income

411.6 Gains from Disposition of Utility Plant.

This account shall include amounts relating to gains from the sale or other disposition of utility plant recorded in accounts 101-104; or property recorded in account 105, Property Held for Future Use or account 121, Nonutility Property, which had previously been classified in the aforementioned utility plant accounts. Record income taxes on gains recorded in this account in account 409, Income Taxes.

411.7 Losses from Disposition of Utility Plant.

This account shall include amounts relating to losses from the sale or other disposition of utility plant recorded in accounts 101-104; or property recorded in account 105, Property Held for Future Use or account 121, Nonutility Property, which had previously been classified in the aforementioned utility plant accounts. Record the reductions in income taxes attributable to losses recorded in this account 409, Income Taxes.

2. Other Income and Deductions

421.1 Gain on Disposition of Property

This account shall be credited with the gain on the

sale, conveyance, exchange or transfer of property other than that property recorded in or previously recorded in, accounts 101-104. (See utility plant instructions 5F, 7E and 10E.) Income Taxes on Gains recorded in this account shall be recorded in account 409, Income Taxes. (See account 411.6. Gains from Disposition of Utility Plant.)

B. Other Income Deductions

421.2 Loss on Disposition of Property.

This account shall be charged with the loss on the sale, conveyance, exchange or transfer of property other than that property recorded in, or previously recorded in, accounts 101-104. (See utility plant instructions 5F, 7E and 10E.) The reduction in income taxes attributable to losses recorded in this account shall be recorded in account 409, Income Taxes. (See account 411.7, Losses from Disposition of Utility Plant.)

No. 10 80 38

GREENWICH WATER COMPANY ET AL — COURT OF COMMON PLEAS

VS. — HARTFORD COUNTY

HOWARD E. HAUSMAN ET AL JUNE 14, 1978

STIPULATION OF FACTS

I. STATEMENT OF FACTS

The parties herein stipulate and agree to the following statement of facts:

Paragraphs 1 to 87 are not printed

II. EXHIBITS

The parties herein stipulate and agree that the following exhibits shall be and are evidence in this case:

(The following exhibits except for Exhibit Nos. 18 and 20 and the Annual Reports for BHC and NHWC for the years 1976 and 1977 were included as part of the record in the federal court in the case captioned *Bridgeport Hydraulic Company* et al vs. *Council on Water Company Lands*, B75-212.)

Exhibit 1 Letter dated January 19, 1972 sent by Public Utilities Commission to all Class A Water Utilities.

Exhibit 2 Notice relating to amendments to Uniform System of Accounts for Class A Water Companies published in July 27, 1971 issues of Connecticut Law Journal.

Exhibit 3 Accounting Principles Board Opinion No. 9 Issued December, 1966.

Exhibit 4 Uniform System of Accounts prescribed for Water Utilities Class A Effective January 1, 1965.

Exhibit 5 Uniform System of Accounts prescribed for Water Utilities Class A as amended Effective January 1, 1972.

Exhibit 6 NARUC (National Associates of Regulatory Utility Commission) Uniform System of Accounts for Class A and Class B Water Companies.

Exhibit 7 United States Federal Power Commission Docket No. R-412, Accounting Treatment to Account for Gains and Losses on the Disposition of Utility Property That Had Been Classified in Utility Service and Consolidated of Certain Depreciation Accounts, dated February 15, 1973.

Exhibit 8 Decision of PUC in Docket No. 11351 (1973) Re: Application of BHC for Amendment to Schedules of Rates.

Exhibit 9 Portions of Testimony and Exhibits in PUC Docket No. 11351 (1973) Re: Applications of BHC for Amendment to Schedules of Rates.

Exhibit 10 Decision of PUC in Docket No. 11550 (1974) Re: Application of NHWC to increase rates.

Exhibit 11 Portions of Testimony and Exhibits in PUC Docket No. 11550 (1974) Re: Application of NHWC to increase rates.

Exhibit 12 Decision of PUC in Docket No. 11639 (1975) Re: Application of BHC to increase rates.

Exhibit 13 Portions of Testimony and Exhibits in PUC Docket No. 11639 (1975) Re: Application of BHC to increase rates.

Exhibit 14 Decision of PUC in Docket No. 11691 (1975) Re: Application of NHWC to increase rates.

Exhibit 15 Portions of Testimony and Exhibits in PUC Docket No. 11691 (1975) Re: Application of NHWC to increase rates.

Exhibit 16 Decision of PUC in Docket No. 11736 (1975) Re: Application of BHC to increase rates.

Exhibit 17 Portions of Testimony and Exhibits in PUC Docket No. 11736 (1975) Re: Application of BHC to increase rates.

Exhibit 18 Decisions of PUCA in Docket No. 760701 (1977) Re: Application of Litchfield Water Company to increase rates.

Exhibit 19 Decision of PUCA in Docket No. 770301 (1977) Re: Application of BHC to increase rates.

Exhibit 20 Decision of PUCA in Docket No. 770323 (1977) Re: Application of NHWC to increase rates.

Exhibit 21 Comparison, Before and After Amendments of Statement of Income.

*

Exhibit 25 Example of Effects of Rate Regulation Amendments.

Exhibit 26 Example of Effects of Rate Regulation Amendments 1976-80 Financing Summary (Capital Structure Determined by Coverage).

Exhibit numbering skips from 21 to 25 due to typographical error; no exhibits are omitted.

Exhibit 27 Example of Effects of Rate Regulation Amendment 1976-1980 Financing Summary (Optimum Capital Structure).

Exhibit 28 Illustrations of Raising Funds Through Land Sale Versus Through Stock Issuances.

Exhibit 29 Illustrations of Accounting for Gains on Land Sales.

Exhibit 30 Report of Ward S. Curraw; Rate of Return on Stockholders' Investment in the New Haven Water Company, 1974-1975.

Exhibit 31 Statement of John D. McClellan.

Exhibit 32 Investment Adjusted for Inflation and Opportunity Cost.

Exhibit 33 Investment Adjusted for Inflation and Opportunity Cost.

Exhibit 34 Investment Adjusted for Inflation and Opportunity Cost.

Exhibit 35 Annual Reports BHC '70-'77.

Exhibit 36 A General Review of Landholdings of BHC.

Exhibit 37 Accounting Principles Board Opinion No. 30 Issued June, 1973.

Exhibit 38 Chapter 128 of the Connecticut Public Acts of 1911; Chapter 178 of the Connecticut Public Acts of 1915; Section 5401 of the Connecticut General Statutes, 1949 Revision.

Exhibit 39 Charter of the Bridgeport Hydraulic Company.

Exhibit 40 Charter of the Cornwall Water Company.

Exhibit 41 Charter of the Lakeville Water Company.

Exhibit 41 Charter of the Lakeville Water Company.

Exhibit 42 Charter of the Litchfield Water Company.

Exhibit 43 Charter of the Norfolk Water Company.

Exhibit 44 Charter of the North Canaan Water Company.

Exhibit 45 Charter of the New Haven Water Company.

Exhibit 46 Letter dated July 24, 1974, by Charles W. Horsfall, president of the Litchfield Water Company, addressed to Richard S. Woodhull, chief of the Water Supplies Section, Connecticut Department of Health; letter dated August 20, 1975, by Richard S. Woodhull, chief of the Water Supplies Section, Connecticut Department of Health, addressed to Charles W. Horsfall, president of the Litchfield Water Company.

Exhibit 47 Application of the Litchfield Water Company to the PUC for approval to sell certain real property, dated November 7, 1974.

Exhibit 48 Affidavit of Edwin L. Mitchell, dated April 8, 1976 with the attached PUC document entitled "Bridgeport Hydraulic Co., Rate of Return."

Exhibit 49 Bridgeport Hydraulic Company Exhibit No. 2 entitled "Achieved v. Allowed Rate of Return" submitted to the Public Utilities Commission in PUC Docket No. 11736 (1975).

Exhibit 50 Affidavit of Ronald J. Verrilli, dated June 23, 1975, submitted to the PUC in PUC Docket No. 11736 (1975).

Exhibit 51 Affidavit of Robert W. Reinhert, dated June 23, 1975, submitted to the PUC in PUC Docket No. 11736 (1975).

Exhibit 52 Bridgeport Hydraulic Company Exhibit No. 9 entitled "Projected Capital Budget 1975-1980" submitted to the PUC in PUC Docket No. 11736 (1975).

Exhibit 53 Bridgeport Hydraulic Company Exhibit No. 11, pages 1 and 3, entitled "Comparative Statement of Income 1968 Through Test Year," submitted to the PUC in PUC Docket No. 11351.

Exhibit 54 Bridgeport Hydraulic Company Exhibit No. 10, pages 1 and 5, entitled "Comparative Statement of Income 1970 Through Test Year," submitted to the PUC in PUC Docket No. 11639."

Exhibit 55 Bridgeport Hydraulic Company Exhibit No. 11, pages 1 and 5, entitled "Comparative Statement of Income 1971 Through Test Year," submitted to the PUC in PUC Docket No. 11736.

Exhibit 56 PUC Decision on Application of the Connecticut Light and Power Company to Increase Its Electric and Gas Rates, PUC Docket No. 11552, dated October 7, 1974.

Exhibit 57 Connecticut Light and Power Company Exhibits G15 and G20, submitted to the PUC in PUC Docket No. 11552.

Exhibit 58 PUC Decision on Application of the Hartford Electric Light Company to Increase Its Electric and Gas Rates, PUC Docket No. 11553, dated October 7, 1974.

Exhibit 59 Hartford Electric Light Company Exhibits No. G15 and G20, submitted to the PUC in PUC Docket No. 11553.

Exhibit 60 PUC Decision as Application of the Southern Connecticut Gas Company to Increase Its Rates to All Classes of Customers, PUC Docket No. 11448, dated November 15, 1973.

Exhibit 61 Seventeenth Supplemental Mortgage Indenture of the Bridgeport Hydraulic Company to the City Trust Company, dated September 1, 1960.

Exhibit 62 Excerpts from the Twelfth Supplemental Indenture between the New Haven Water Company and the First New Haven National Bank, dated April 1, 1971.

Exhibit 63 Bridgeport Hydraulic Company 9-⅞% Preferred Stock - Series A, Purchase Agreement, dated December 7, 1970.

Exhibit 64 Bridgeport Hydraulic Company, 11% Preferred Stock - Series B, Purchase Agreement, dated March 26, 1975.

Exhibit 65 Bridgeport Hydraulic Company $7,500,000 First Mortgage 10½% Bonds - Series S, Purchase Agreement, dated March 26, 1975.

Exhibit 66 Indenture Agreement between the Seymour Water Company and The New Haven Bank N.B.A., dated June 1, 1956.

Exhibit 67 Bridgeport Hydraulic Company Maps SH-37, 38, 39, 42, and 43 illustrating the Company's landholdings surrounding the Trap Falls Reservoir and the Company's proposed phases for land disposition.

Exhibit 68 Bridgeport Hydraulic Company Maps EA-20, 21, 27, and 28 illustrating portions of the company's landholdings surrounding the Easton Reservoir and the Company's proposed phases for land disposition.

Exhibit 69 Bridgeport Hydraulic Company Maps EA-14, 15, and 22 illustrating portions of the Company's landholdings surrounding the Saugatuck Reservoir and the Company's proposed phases for land disposition.

Exhibit 70 Bridgeport Hydraulic Company Maps SH-22 and 23 illustrating portions of the Company's proposed Shelton Lakes Project.

Exhibit 71 Bridgeport Hydraulic Company Map SH-18 illustrating the proposed Gray Street Pump Station.

Exhibit 72 New Haven Water Company Maps illustrating the Lake Gaillard System, Sheet No. 7 and Sheet No. 17.

Exhibit 73 New Haven Water Company Maps illustrating the West River System, Sheet Nos. 1, 11, 24, and 26.

Exhibit 74 New Haven Water Company Map illustrating the Wintergreen System, Sheet No. 10.

Exhibit 75 New Haven Water Company Map illustrating the Prospect System, Sheet No. 23.

Exhibit 76 New Haven Water Company's 1974 Annual Report to its stockholders.

Exhibit 77 New Haven Water Company's 1975-1977 Annual Reports to its stockholders.

Exhibit 78 Transcript of Testimony of Edwin L. Mitchell, May 10, 1976.

Exhibit 79 Transcript of Testimony of Edwin L. Mitchell May 11, 1976.

Exhibit 80 Transcript of Testimony of Howard Hausman, May 17, 1976.

Exhibit 81 Transcript of Testimony of Phillip M. Dolan, April 28, 1976.

Exhibit 82 Transcript of Testimony of Ronald J. Verrilli.

Exhibit 83 Transcript of Testimony of William S. Warner, April 27, 1976.

Exhibit 84 Transcript of Testimony of William S. Warner, July 15, 1976.

Exhibit 85 Transcript of Testimony of John M. Kingsland, April 29, 1976.

Exhibit 86 Transcript of Testimony of Jay H. Price, Jr., April 28, 1976.

Exhibit 87 Transcript of Testimony of Jay H. Price, Jr., May 11, 1976.

Exhibit 88 Transcript of Testimony of Richard Woodhull, May 5, 1976.

Exhibit 89 Affidavit of Charles Woods, June 15, 1976.